

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

FARMLAND NATIONAL BEEF PACKING COMPANY, L.P.¹

Employer

and

Case 10-RC-15284

UNITED FOOD AND COMMERCIAL WORKERS
UNION, AFL-CIO, CLC, LOCAL 1996

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

¹ The name of the Employer appears as amended at the hearing.

² Both parties submitted briefs that have been duly considered.

5. The Employer is a Delaware limited partnership with an office and place of business in Moultrie, Georgia, where it is engaged in the processing and packaging of meat. There is no history of collective bargaining in the unit sought by the Petitioner. The Petitioner seeks to represent a unit of all full-time and regular part-time Quality Assurance employees employed by the Employer at its Moultrie, Georgia facility, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act. The Employer contends that the unit is inappropriate because it is comprised of supervisory employees as defined in Section 2(11) of the Act or managerial employees as defined in applicable case law. It further contends that the unit violates Section 9(c)(5) of the Act because it is based on the extent of Petitioner's organizing efforts. The parties stipulated and I find that Quality Assurance Manager George Kyser and Quality Assurance Supervisor Gloria Willingham are statutory supervisors and should not be included in the unit.

In Case 10-RC-15278, the Petitioner initially sought to represent all production and maintenance employees, including the quality assurance (hereinafter "QA") employees at issue in the present case. Subsequently, Petitioner amended its petition in Case 10-RC-15278 to exclude the QA employees and simultaneously filed the instant petition seeking to represent QA employees in a separate unit. An election was conducted among employees in the unit set forth in Case 10-RC-15278 and a majority of those employees voted against Petitioner.

I turn first to the issue of whether the subject employees are supervisors under Section 2(11) of the Act or managerial employees. The burden of establishing that the QA employees are supervisors or managers rests with the Employer. The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989).

The employer operates a facility that processes boxed beef and pork into “case ready” packages for sale at Wal-Mart, its sole customer. The Employer runs two shifts: first shift is from 6:00 a.m. to 2:30 p.m. and second shift begins at 3:00 p.m.

The Employer’s operations must comply with three types of quality and safety guidelines: it’s own in-house Hazard Analysis of Critical Control Points (HACCP) standards, USDA regulations, and guidelines set by Wal-Mart. QA employees are responsible for making sure that the Employer’s operations and products meet these guidelines. The specifications are contained in a manual that QAs keep with them on the production floor.

When an area or product does not meet specifications, the QA is required to tag the area or product. This indicates that the area or product cannot be used until the condition is corrected. QAs receive no special training besides on-the-job training. There are no written job descriptions for QA employees, nor for any other employees at the facility.

There are 195 production, maintenance and shipping employees on first shift and 153 on second shift. There are eleven QAs, eight leadpeople and seven supervisors on first shift; eight QAs, six leads and six supervisors on second shift.

All employees wear a specific color hard hat. QA employees wear orange hats, first shift production employees wear white, second shift production employees wear gold, and supervisors and managers, including George Kyser and Gloria Willingham, wear blue. Production leadpeople, who were included in the production and maintenance bargaining unit, wear red.

The HACCP QA works in all production areas and is responsible for monitoring temperature and other HACCP requirements. All QA employees except the HACCP QA are assigned to a specific area and are not free to move around the plant as they choose.

They must get permission before they can leave their work areas and at least one QA has been disciplined for leaving his work area.

Line Inspector QAs are stationed at the end of each production line. They are responsible for checking the trayed product to make sure it complies with the customer's written specifications. If the product does not meet specifications, the line inspector puts it back on the belt to be redone. Unlike other QAs, line inspectors do not complete any paperwork. Eight to ten production employees and a lead person are also assigned to each of the six lines. One production supervisor oversees all six lines.

The Raw Materials QA works in the debuggging room and is responsible for checking incoming product to make sure that it meets written specifications. This QA can reject product that does not meet the guidelines. Ten production employees, a lead person and a production supervisor also work in this area of the plant.

The Slicing QA is stationed at the main product conveyor that runs from the slicing department to the packaging department and ensures that the product is sliced according to written specifications. This QA may also reject product that does not conform to specifications.

Ground Beef QAs are stationed in the ground beef department. They test and inspect the product to make sure that it conforms to safety and quality standards. Thirty-five production employees, a lead person and a production supervisor are also assigned to this area. Ground Beef QAs can shut down production and remove meat that does not conform to specifications.

The Finished Product QA is stationed in the area where packaged meat is boxed and labeled. This QA performs random audits on a specific number of packages to ensure that the product complies with specifications. Ten or eleven production employees work in this area as well.

Three first shift QAs (the Raw Material QA, the HACCP QA and the Ground Beef QA) perform a pre-operational inspection, or “pre-op” at 4:30 a.m. The pre-op is performed to ensure that all areas of the plant, which is cleaned by an outside contractor, have been cleaned according to specifications. If an area does not meet the standards, the area is “tagged” until the problem can be corrected. The second shift Raw Material, HACCP and Ground Beef QAs perform a similar but less extensive inspection between first and second shifts.

There is a QA office located away from the production area and the administrative offices. This office contains two desks and two computers. One desk and computer are shared by Kyser and Willingham and the other desk and computer are shared by all QAs. Certain production employees also use this desk and computer for printing labels. Managers or supervisors review all of the paperwork completed by QAs and leadpeople. Most of the QA reports must be signed by Kyser or Willingham. QAs are not responsible for filing or maintaining the documents once they have completed them and turned them in to Kyser or Willingham.

Several production employees have been trained to perform specific QA jobs. When a QA is absent from work, a production employee fills in on the particular job he has been trained to do and the remaining QA employees may be shifted around to cover the other positions. Production employees who are filling in for QAs do not do paperwork. QAs do not perform production work.

Production employees and QAs are paid hourly and punch a time clock. The present pay range for QAs is \$8.75 to \$11.50 per hour, while the pay range for production employees is \$8.50 to \$12.50 per hour. All lead persons earn \$12.50 per hour, more than the highest paid QA. All supervisors and managers are salaried and do not use the time clock. Supervisors and managers earn a minimum salary of \$30,000 per year. Like

production employees, QAs must report to their supervisors when they are absent, late, or need time off from work. QAs may not leave until they have completed their paperwork for the day, but they must otherwise seek approval from their supervisors for overtime. They are not free to modify their work schedule without consulting with their supervisor.

Before February 2002, the employer did not consider QAs to be supervisors or managers. QAs had the same fringe benefits as production employees, including one week of vacation after one year of service and three days of bereavement or funeral leave. In February, the Employer reclassified QAs as “hourly management” or “management support.” There was no change in job duties, training, personnel procedures or supervision. The employer conducted a meeting in mid-February to announce changes in QAs’ fringe benefits. These changes had become effective February 4, 2002. The employer did not issue any written documentation of the changes to employees, nor were the changes announced to production employees. The employer announced that QAs would (1) earn three vacation days after three months of service, then would accrue three quarters of a day per month, up to twenty days; (2) after six months, earn a half day of sick leave per month, up to twenty five days; (3) have five, rather than three days of funeral leave, (4) have one extra paid holiday and one extra paid personal day; and (5) receive up to \$2500 per year for tuition reimbursement. There is no clear evidence that any QAs have actually requested or used any of these benefits. Sometime after the mid-February meeting, QA employees were granted a raise of either \$0.25 or \$0.50 per hour. Supervisors and managers earn two weeks vacation after one year of service.

Record evidence revealed that QAs do not actually assign production workers to correct unacceptable areas or product. Instead, they notify a lead person, production supervisor or QA supervisor, depending on the situation. The supervisor or lead person then assigns the task of correcting the situation.

When QAs have tried to instruct production employees to correct situations, those employees have complained to supervisors, who have instructed QAs to let “blue hats” handle those situations. QAs have been disciplined for insubordination to production supervisors. Ground beef QA Willie Pace was disciplined for being out of his work area when he went back to check on an area that he had found unacceptable during pre-op.

Although QAs make notations in their reports about employee violations such as wearing jewelry or chewing gum, they do not discipline the employees. They do not “tag” people, only product and work areas. On one occasion, QA Willie Pace received a write- up as a result of an altercation that occurred when he tried to correct an employee who was not wearing required safety clothing.

QAs have played no role in evaluating employees. They are not responsible for any personnel matters such as granting permission to leave early, assigning overtime, distributing paychecks, and issuing or recommending discipline. In contrast, leadpeople make routine task assignments, give instructions to employees, excuse employees to leave early, attend supervisory meetings, and correct employees in their area about safety and hygiene violations.

It is well established that the party who asserts that an individual possesses supervisory status bears the burden of demonstrating the actual exercise of supervisory authority by the individuals in question. Bennett Industries, 313 NLRB 1363 (1994); Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989); Soil Engineering & Exploration Co., 269 NLRB 55 (1984). The Board has a duty not to construe the term “supervisor” too broadly, because employees who are deemed supervisors are denied important rights that the Act was intended to protect. Phelps Community Medical Center, 295 NLRB 486, 492 (1989). Any individual having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, responsibly

direct employees, adjust grievances, or effectively recommend such actions is a supervisor under Section 2(11) of the Act. However, such authority must be exercised with independent judgment and not merely in a routine or clerical manner. Clark Machine Corp., 308 NLRB 555 (1992); Juniper Industries, 311 NLRB. 109 (1993). Independent investigation by higher supervision belies the existence of real supervisory authority. Brown & Root, Inc., 314 NLRB 19 (1994); Ball Plastics Division, 228 NLRB 633, 634 (1977). Secondary indicia such as supervisory ratio, method of pay calculation, and pay differential alone are insufficient to establish supervisory status. North Jersey Newspapers Co., 322 NLRB 394 (1996); Billows Electric Supply of Northfield, Inc. 311 NLRB 878 (1993); McClatchy Newspapers, Inc., 307 NLRB 773 (1992).

Managerial employees “formulate and effectuate management policies by expressing and making operative the decisions of their employer and who have discretion in the performance of their jobs independent of their employer’s established policies.” S.S. Joachin and Anne Residence, 314 NLRB 1191, 1194 fn.6 (1994). They hold executive positions and have authority to formulate, determine or effectuate policies with respect to employee relations matters. North Arkansas Electric Cooperative, 185 NLR 550 (1970). The functions and interests of managerial employees are more closely aligned with management than with rank-and-file employees. Howard Cooper Corp., 121 NLRB 950, 951 (1958).

Applying the above principles, I find that the Quality Assurance employees do not possess or exercise any of the supervisory indicia enumerated in the Act, nor do they formulate or effectuate management policies. Accordingly, they are statutory employees

eligible for union representation. I next turn to the Employer's contention that the proposed unit is inappropriate under the provisions of Section 9(c)(5) of the Act.³

The petitioned-for unit need not be the only appropriate unit, or the ultimate unit, or the most appropriate unit. The Act requires only that the unit be "appropriate," that is, appropriate to insure to employees in each case "the fullest freedom in exercising the rights guaranteed by the Act." Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); Federal Electric Corp., 157 NLRB 1130 (1966); Parsons Investment Co., 152 NLRB 192 fn. 1 (1965); Capital Bakers, 168 NLRB 904, 905 (1968); National Cash Register Co., 166 NLRB 173 (1967). The petitioner is not required to seek representation in the most comprehensive grouping of employees. Dixie Bell Mills, Inc., 139 NLRB 629 (1962).

Section 9(c)(5) of the Act provides that "in determining whether a unit is appropriate, the extent to which the employees have organized shall not be controlling." Section 9(c)(5) does not prohibit the Board from considering the extent of organization as a factor in unit determinations. Rather, it prohibits using the extent of organization as the controlling or sole factor in unit determinations. Overnite Transportation Co., 322 NLRB 723 (1996), citing NLRB v. Metropolitan Life Insurance Co., 380 U.S. 438, 442 (1965).

I note that no other labor organizations seek to represent the Quality Assurance employees in a broader unit. Moreover, neither party presented evidence that the QAs shared such a community of interest with the production and maintenance unit so as to compel their inclusion therein. I therefore conclude that the unit sought is an appropriate one. Lundy Packing Company, Inc., 314 NLRB 1042 (1994). Consequently, I find the

³ The crux of the Employer's argument on brief appears to be its supposition that the Petitioner did not include the Quality Assurance employees in the election conducted in Case 10-RC-15278 because it feared that it could not prevail in a wall-to-wall election.

following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Quality Assurance employees employed by the Employer at its Moultrie, Georgia facility, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Food and Commercial Workers Union, AFL-CIO, CLC, Local 1996.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election

should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the NLRB Region 10 Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303-1504, on or before June 10, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC, 20570. This request must be received by the Board in Washington by June 17, 2002.

DATED June 3, 2002, at Atlanta, Georgia.

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